IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.36913 of 2005
GHAN SHYAM KUMAR Vs
STATE OF BIHAR & ANR
---

21 13-08--2008 This application has been filed for quashing the order dated 13.6.2005 passed by learned 6th Additional Sessions Judge, Patna in Misc. case no. 1/2004 whereby and where under he had directed to file complaint case against the petitioner as per requirement of section 340 of Code of Criminal Procedure (in short as Code) in the court of Chief Judicial Magistrate, Patna. During the pendency of the present application there was certain development and thereafter the petitioner filed IA no. 29/2007 praying therein to quash the complaint case no. 1387 (C) of 2006 as contained in annexure-4 to the application which was lodged by Sri R. N. Sharma, learned 6th Additional Sessions Judge against the petitioner.

WEB COPY NOT OFFICIAL

Shortly stated the case of O. P. no.2, Savita Kumari, is that she was married to the petitioner Ghan Shyam Kumar on 16.12.1999. On 7.8.2001 she filed complaint case no. 1449(C)/2001 in the court of Chief Judicial Magistrate, Patna for offence punishable u/s 498A of the Penal Code. After enquiry cognizance was taken and processes were issued against Ghan Shyam Kumar, his father Shivjee Prasad and mother Shakuntala Devi. The accused surrendered in the court of Sub divisional Judicial Magistrate, Patna for bail but their prayer was rejected and thereafter they filed B. P. nos. 2959/2002 and 4919/2002 in the court of learned Sessions Judge, Patna. Both the bail petitions were transferred to the court of 6th Additional Sessions

Judge, Patna for disposal. In both bail petitions certified copy of informatory petition dated 10.4.2001 allegedly filed by Ghan Shyam Kumar in the court of learned Sub divisional Magistrate, East, Muzaffarpur was filed. The O. P. no.2 on suspicion that such informatory petition was forged and fabricated one filed a petition u/s 340 pf the Code in the court of Chief Judicial Magistrate, Patna which was registered as complaint case no. 581 C/2003. The said petition was transferred to Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna for enquiry and disposal. Learned Magistrate conducted enquiry and by order dated 16.7.2004 dismissed the said case on the ground that the said forged and fabricated petition had not been filed in his court rather the same was filed in the court of 6th Additional Sessions Judge, Patna and hence he is not competent to file that case. Thereafter O. P. no.2 filed Misc. case no. 1/2004 u/s 340 of the Code on 28.8.04 in the court of 6th Additional Sessions Judge, Patna for filing complaint case against the petitioner for misleading the court by annexing a forged document in B. P. nos 2959/2002 and 4919/02. Show cause notice was issued to the petitioner. In reply to show cause the petitioner stated that a similar case on similar allegation has been rejected by Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna and the said informatory petition was genuine and not forged one. Learned 6th Additional Sessions Judge, Patna thereafter conducted enquiry and by order dated 13.6.05 found a prima facie case against petitioner u/ss 192 and 193 of the Penal Code and accordingly, filed complaint case mentioned above against the

WEB COPY NOT OFFICIAL

petitioner, in the court of Chief Judicial Magistrate, Patna.

It was contended on behalf of the petitioner that learned 6th Additional Sessions Judge, Patna failed to consider that the copy of court fee register and the filing register makes it clear that informatory petition was filed in the court of Sub divisional Magistrate, East, Muzaffarpur by the petitioner and the copying department had issued certified copy of that informatory petition on payment of proper court fee on the basis of requisition filed on behalf of the petitioner for obtaining the certified copy. The said certified copy of informatory petition so issued by the Sub divisional Magistrate, East, Muzaffarpur was filed on behalf of the petitioner along with bail petition. It was further argued that learned Additional Sessions Judge also failed to notice that O. P. no.2 had filed a complaint case in this regard earlier in the court of learned Chief Judicial Magistrate, Patna. The said petition was numbered as complaint case no. 581C /2003. Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna vide his order dated 16.7.2004 dismissed the complaint case in exercise of his power u/s 203 of the Code. O. P. no.2 being the complainant did not challenge the said rejection before any higher court and thus, the order dated 16.7.2004 attained finality.

WEB COPY NOT OFFICIAL

On the other hand it was contended on behalf of O. P. no. 2 that after enquiry learned Additional Sessions Judge recorded a definite opinion that informatory petition is forged and has been used in the bail petition to take benefit. The disputed question of fact is not a ground for quashing the present criminal case. It was further

contended that defence of the accused cannot be considered at this stage.

Thus, main allegation is that the petitioner had procured a forged and fabricated certified copy of informatory petition dated 10.4.2001 purported to have been filed before Sub divisional Magistrate, East, Muzaffarpur on 10.4.2001 and said certified copy was filed in the above mentioned two bail petitions to obtain bail. The O. P. no.2 doubted the genuineness of the said informatory petition and so she filed complaint case before Chief Judicial Magistrate, Patna bearing complaint case no. 581 C/2003. From annexure-3 to the application it appears that In charge Dy Collector, District Judicial Record Room, Muzaffarpur vide his letter no. 91 dated 10.10.2003 informed Sub divisional Magistrate, East, Muzaffarpur that on receipt of his letter no. 4214 dated 9.10.03 an enquiry was made and it was found that in the court fee register dated 10.4.2001 of Sub divisional Magistrate, East, Muzaffarpur at serial no. 4793 the name of Ghan Shyam Kumar had been mentioned. It appears from annexure-4 that Sub divisional Magistrate, East, Muzaffarpur vide his letter no. 4475 dated 24.10.03 informed Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna that on 10.4.2001 an informatory petition was filed by Ghan Shyam Kumar. Then it appears from annexure-6 to the application that Sub divisional Magistrate, East, Muzaffarpur vide his letter no. 875 dated 29.1.2004 informed Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna that informatory petition filed by Ghan Shyam Kumar has been entered at serial no. 4793 in the court

WEB COPY NOT OFFICIAL

fee register. He also informed that after expiry of statutory period the said informatory petition had been destroyed. Then annexure-7 is xerox copy of court fee register of the court of Sub divisional Magistrate, East, Muzaffarpur sent by S.D.M concerned to the Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna for information. A bare perusal of the aforesaid letters, court fee register and other papers makes it clear that informatory petition was filed in the court of Sub divisional Magistrate, East, Muzaffarpur by the petitioner and the copying department had issued certified copy of that informatory petition to the petitioner on payment of proper court fee. It appears that learned Additional Sessions Judge did not consider the above mentioned papers and based his conclusion on annexures- 9 and 10 in which it was mentioned that there was a list available of 251 persons who had filed informatory petitions in the court of Sub divisional Magistrate, East, Muzaffarpur but in the office of judicial record room of Muzaffarpur the said list contained 252 persons and at serial 252 the name of Ghan shyam Kumar was mentioned and considering the discrepancies in the two lists Sub divisional Magistrate, East, Muzaffarpur in his letter dated 25.5.2004 informed that that there has been some sort of manipulation and bungling in entertaining and making entry of the name of Ghan Shyam Kumar at serial no. 252. The learned 6th Additional Sessions Judge, Patna concluded that till 30.4.2001 251 persons had only filed informatory petitions and so how the name of Ghan Shyam Kumar figured at serial no. 252 and therefore, it creates doubt that how at the bottom of the

WEB COPY NOT OFFICIAL

list the name of Ghan Shyam Kumar was entered in the register.

A person cannot be prosecuted on mere suspicion. Sub divisional Magistrate, East, Muzaffarpur as well as Dy Collector, In charge record room, Muzaffapur had submitted report in writing before Shri Manoj Kumar Sinha, Judicial Magistrate, 1st class, Patna that the informatory petition was filed on behalf of the petitioner in the court of Sub divisional Magistrate, East, Muzaffarpur. Certified copy of the same was issued on payment of proper court fee. They had also informed that name of Ghan Shyam Kumar was found mentioned at serial no. 4793 of court fee register dated 10.4.2001. In face of the aforesaid communications it cannot be accepted that a forged certified copy of informatory petition was obtained by the petitioner Ghan Shyam Kumar from record room of Muzaffarpur. It is true that at the stage of taking cognizance the only thing which has to be considered whether there is sufficient ground for proceeding further against accused. Sufficient grounds do not mean sufficient grounds for conviction but such ground must be sufficient to put the accused upon trial.

WEB COPY NOT OFFICIAL

The finding recorded by the 6th Additional Sessions Judge, Patna in the impugned order dated 13.6.2005 is not sustainable in law. This application is, accordingly, allowed and the impugned order dated 13.6.2005 passed in Misc. case no. 1/2004 is hereby quashed and, accordingly, complaint case no. 1387 (C)/2006 lodged on the basis of above impugned order also stands quashed.

BKS **(M. Saran,J.)**